

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-shl

4 Adv. Case No. 19-08289-shl

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6 In the Matter of:

7
8 PURDUE PHARMA L.P.,

9
10 Debtor.

11 - - - - - x

12 PURDUE PHARMA L.P., ET AL,

13 Plaintiff,

14 v.

15 COMMONWEALTH OF MASSACHUSETTS, ET AL.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 300 Quarropas Street

20 White Plains, NY 10601

21
22 August 17, 2022

23 11:12 A.M.

1 B E F O R E :

2 HON SEAN H. LANE

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: UNKNOWN

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1 HEARING re Doc. #4888 Motion To File Proof Of Claim After
2 Claims Bar Date Filed By Seung Han

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4 HEARING re Doc. #4889 Motion To File Proof Of Claim After
5 Claims Bar Date Filed By Roy Howard Murry

6

7 HEARING re Doc. #4916 Motion To Reclassify Claim Filed By
8 Personal Injury Claimant

9

10 HEARING re 19-08289-shl Doc. #365 Motion To Terminate
11 Temporary Injunction Filed By Fredrick Hill Re: The Purdue
12 Frederick Co.

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14 HEARING re Doc. #369 Motion To Terminate Temporary
15 Injunction Filed By Fredrick Hill Re: The Purdue Frederick
16 Company

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18 HEARING re Doc. #370 Motion To Terminate Temporary
19 Injunction Filed By Fredrick Hill Re: Purdue Frederick
20 Company

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25 Transcribed by: Sonya Ledanski Hyde

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20 STEPHANIE EBERHARDT

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23 CAROLINE GANGE

24 ROBERT GAYDA

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16 ROCHELLE GUITON
17 VINCE SULLIVAN

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1 P R O C E E D I N G S

2 THE COURT: ... on the agenda which is set forth in
3 a written agenda that was filed on the docket, on Docket
4 Number 5020. And we'll start today's hearing by getting
5 appearances, which is the way we normally proceed. So let
6 me find out who's here on behalf of the Debtors.

7 MR. HUEBNER: Sure. Good morning, Your Honor.
8 The hearing is going to be handled by Jim McClammy and Ben
9 Kaminetzky. There are different matters on. This is
10 Marshall Huebner. And I think that is it for the Debtors
11 and good morning.

12 THE COURT: All right, thank you very much. And
13 on behalf of the Committee?

14 MR. PREIS: Good morning, Your Honor. Arik Preis
15 from Akin Gump on behalf of the Official Committee of
16 Unsecured Creditors.

17 THE COURT: All right, good morning. And on
18 behalf of the United States Trustee's Office? All right.
19 On behalf of the State of Connecticut? All right. On
20 behalf of --

21 MR. GOLDMAN: Your Honor, excuse me, Your Honor,
22 for the delay, Irve Goldman, Pullman Comley, representing
23 the State of Connecticut.

24 THE COURT: All right, Good morning. The
25 technology we use always presents challenges. So no worries

1 about the delay. And on behalf of the Ad Hoc Group of
2 Individual Victims?

3 MR. SHORE: Good morning, Your Honor, Chris Shore
4 from White and Case.

5 THE COURT: Good morning. And on behalf of
6 various Canadian creditors? All right. On behalf of the
7 state of -- well, let me -- on behalf of the Ad Hoc
8 Committee from Kramer Levin.

9 MR. ECKSTEIN: Your Honor, good morning. It's
10 Kenneth Eckstein of Kramer Levin on behalf of the Ad Hoc
11 Committee of other states and other municipal entities.

12 THE COURT: All right. And on behalf of the
13 United States?

14 MR. ARONOFF: Yes, Your Honor. It's Peter Aronoff
15 from the US Attorney's Office, SDNY.

16 THE COURT: All right, good morning. On behalf of
17 the State of Washington?

18 MR. GOLD: Thank you, Your Honor, good morning.
19 Matthew Gold from Kleinberg Kaplan Wolfte and Cohen.

20 THE COURT: All right. On behalf of the Raymond
21 Sackler Family.

22 MR. UZZI: Good morning, Your Honor, Gerard Uzzi
23 of Milbank on behalf of Raymond Sackler family.

24 THE COURT: All right. On behalf of MSGE Group?

25 MR. LIESEMER: Good morning, Your Honor. This is

1 Jeffrey Liesemer on behalf of the MSGE Group.

2 THE COURT: All right. I wasn't sure if there was
3 anyone here on behalf of Ascent Pharmaceuticals. As I
4 signed a stipulation yesterday, I think that adjourned those
5 matters out but just an abundance of caution, anyone here
6 from Ascent Pharmaceuticals? All right, on behalf of the Ad
7 Hoc Group of Hospitals? All right, on behalf of the State
8 of Texas? All right.

9 I know we have a few motions that are on today and
10 I want to make sure to get those appearances. So there was
11 a motion filed by Roy Howard. Let me make sure that Mr.
12 Howard is here. All right. On behalf -- there was a motion
13 filed by Mr. Han, Seung Han, S E U N G. I may be
14 mispronouncing that. Is Mr. Han here?

15 MR. HAN: Yes, Your Honor, I'm here.

16 THE COURT: All right. Good to have you. Good
17 morning.

18 MR. MCCLAMMY: Jim McClammy from Davis Polk. I
19 just want to let you know that I believe Mr. Roy Howard is
20 Roy Howard Murray and I believe he's also on.

21 THE COURT: Oh, I'm sorry, Mr. Murray, I read part
22 of a line but not the information on the next part of the
23 text. So let me get your appearance, Mr. Murray. Make sure
24 you can hear me and I can hear you.

25 MR. MURRAY: Yes, I can hear you. Mr. McClammy is

1 correct. Sir name is Murray. All right. Good to have you
2 here. And let me find out what other appearances that we
3 need that we have not yet received.

4 MS. BALL: Good morning. Good morning, Your
5 Honor, you probably don't need this but as just to complete
6 the family, the Mortimer side of the Sackler persons.
7 Jasmine Ball, of Debevoise Plimpton LLP.

8 THE COURT: All right, Ms. Ball, you're coming in
9 very, very low volume-wise.

10 MS. BALL: Apologies, Your Honor. For the
11 Mortimer Sackler, initial covered Sackler persons, but we
12 don't expect to speak.

13 THE COURT: All right, thank you. Any other party
14 that wishes to make an appearance at this time?

15 MS. OSTERLOH: Hello, Your Honor. This is Janet
16 Osterloh, Movant JO.

17 THE COURT: All right, good morning. Any other
18 party?

19 MR. HILL: Frederick Hill.

20 THE COURT: All right. Good morning. Any other
21 party?

22 MR. DOUGHERTY: Good morning, Your Honor. It's
23 John Dougherty from Mintz Levin on behalf of the Purdue
24 Frederick Company, Inc. in the event that were needed for
25 Mr. Hill's motion.

1 THE COURT: All right, good morning. Anyone else?

2 MR. MATOTT: Good morning, Judge. Andrew Matott
3 from Seward Kissel on behalf of Ascent Pharmaceuticals. I
4 didn't quite get off of mute in time earlier.

5 THE COURT: All right. That's fine. I believe
6 those matters have been adjourned, but I wanted to make sure
7 that we got your appearance if you were here. All right,
8 anyone else? All right. With that, Mr. McClammy, I'll turn
9 it over to you as to the agenda. I do know that in
10 addressing matters today, I think the intent was to have Mr.
11 Murray's matters addressed fairly at the top of the agenda
12 in terms of scheduling. And you can walk us through the
13 agenda.

14 MR. MCCLAMMY: Yes, Your Honor. Thank you very
15 much. The first two items on the, on the agenda are the
16 late claim motions filed by Mr. Han and Mr. Murray. The
17 Debtors filed a joint response to both of those motions
18 together with the Creditors Committee. And essentially
19 where we are with respect to these motions, in light of some
20 of the admonitions from Judge Drain, as we've been reviewing
21 and addressing the late claim motions that have been coming
22 in, is proposing a scenario in which we would adjourn or
23 essentially hold in abeyance these motions until after
24 confirmation of a plan of reorganization, at which point in
25 time we would be able to see whether or not there's been an

1 influx of additional claims or whether the, you know, the
2 number of claims that come in remain fairly manageable;
3 we're not opening the floodgates. We are now essentially
4 two years out from the, from the July, you know, bar date.
5 And our thought was that this would be the most reasonable
6 way to manage the cost of the estate, as well as, you know,
7 allow the opportunity for these claims to, these late claims
8 to be addressed, taking into full consideration what the
9 universe might look like after we've had the chance to see
10 what comes in by the time a plan is confirmed here.

11 I'm happy to walk the Court through the Pioneer
12 Factors and our, and our response if the Court would, if the
13 court would like first. Otherwise, I did see that, and as
14 the Court is aware, that Mr. Murray and Mr. Han are both on
15 the line. Happy to hear from them first or answer any
16 questions the Court may have.

17 THE COURT: All right. I don't need you to walk
18 through the legal factors at this point, although perhaps
19 we'll get there. And so I just wanted to convey to Mr.
20 Murray and Mr. Han to the extent that it wasn't already
21 clear from the papers that you filed, the Debtors' filed,
22 the Committee filed, and the statement you just made, I
23 think what the response is, right -- so you filed the
24 motion, Mr. Han and Mr. Murray, seeking certain kinds of
25 relief in the law. Then people get a chance to file their

1 response. The Debtors and the Committee here did that. And
2 rather than oppose it, what they said was now is not the
3 time to figure this out, Judge. And the idea is that the
4 case is still proceeding. As I think folks know, there's an
5 appeal in the Second Circuit about what should happen with
6 confirmation. And that there's another factor which is also
7 that there are late claims that are coming in over time, and
8 that it makes sense to wait to see when we get to towards
9 the end of the case to figure out how many late claims we
10 have and, therefore, that factors into how they should be
11 treated and whether they should be granted or not.

12 And so the idea is, I think, that the Debtors and
13 the Committee said right now is not the right time to do
14 this. So I wanted to make that point as clear as I could
15 just so you understand where we are, what they've suggested
16 that we do. And I've read your papers, Mr. Han and Mr.
17 Murray. I've read the papers submitted by the Debtors and
18 the Committee. And so that's the, that's the suggestion
19 that they've made. And I can explain in a minute why I
20 think that's a good suggestion and appropriate under the
21 facts that we have here, the circumstances we have here both
22 as a matter of the facts of this case and the applicable
23 law. But I at least wanted to give you a brief chance to
24 speak if there's something, a question you had about this or
25 something you wanted to clarify, or if you wanted to let me

1 know that you oppose this approach that's been suggested by
2 the Debtors and the Committee. So let me hear first from
3 Mr. Murray and then I'll hear from Mr. Han in a minute. Mr.
4 Murray.

5 MR. MURRAY: Yes, Your Honor, thank you. So I
6 only saw this motion last night. I understand it, I think.
7 It seems the third Pioneer Factor is the main source of
8 contention. My issue is that my claims were filed prior to
9 others that have already been granted late acceptance. For
10 example, Docket Number 4886, that was filed on June 8th. My
11 motion was docketed June 6th. And the June 8th Docket, the
12 attachment, which is the Attachment A 4886-1 indicated that
13 the Debtors and the Committee had no problem with proposing
14 an order to grant the motions. And this is, like I said,
15 it's two days after my motion was filed. The only reason I
16 waited was the Rule 9018 motion that I filed to secure my
17 legal mail because it was being opened. That was approved
18 May 18th, the same day that Judge Drain issued this
19 admonition that we "maybe reaching the point going forward
20 where it may be too late to file."

21 So six months prior to that, my initial
22 placeholder claim was filed. Then I was denied legal access
23 due to COVID lockdowns for essentially, well over two
24 months, several months following. Once I got access again,
25 I did the research on bankruptcy court law, filed the 9018

1 motion. And only waited to file the motion for bar date
2 relief until after that was resolved by the Court. That was
3 filed -- I received the order on the 9018 about May 24th or
4 25th. And then this motion was mailed the 30th, 31st and
5 then docketed on June 6th. So I just, I'm not clear what
6 changed other than hitting the two-year line, which I was in
7 before between June 6th, June 8th and the docketing of this
8 -- or the scheduling of this hearing, which I believe was
9 July 8th.

10 So I would, I would just ask for equitable relief
11 to other parties that filed after me and filed their motions
12 about the same time so that I don't have to just wonder
13 whether my claim is going to be accepted and I can proceed
14 in filing it.

15 THE COURT: All right, thank you very much for
16 that helpful background. I appreciate it. And let me hear
17 from Mr. Han. Oh, Mr. Han, you may be on mute.

18 MR. HAN: Okay, so I've been locked up
19 incarcerated for six years and I just got released on May
20 25th. So during the lockdown --

21 THE COURT: Congratulations.

22 MR. HAN: Thank you. I wasn't able to have access
23 to any legal libraries or anything because I was in close
24 custody and in close custody, we're pretty much on 21-hour
25 lockdowns a day. And due to the COVID, that made it even

1 harder for me to have access to go to the legal library. So
2 it was nearly impossible for me to file these claims when I
3 didn't have access to anything. And as soon as I was able
4 to file the claims, I did it as soon as I could. And pretty
5 much when I got released, that's when the file came and
6 that's how this court date was set up.

7 THE COURT: All right. Thank you very much for
8 that information, Mr. Han. And let me just briefly turn it
9 over to Mr. McClammy if he has any responses or any
10 information he wants to provide about the Debtors' thinking
11 on late claims.

12 MR. MCCLAMMY: Thank you, Your Honor. You know,
13 as with all of these things, we do try to undertake as
14 careful a balancing of the various competing concerns as we
15 possibly can with the information that we are provided at
16 the time. Some of the information we have now is new to, is
17 new to us and it's the type of thing that can factor into
18 the considerations that we proposed with respect to hearing
19 these after the plan is confirmed. I think we do -- and I
20 understand Mr. Murray's point and we did point to the fact
21 that other similar motions have been, you know, granted in
22 the past. And perhaps, if we're not adjourning until after
23 the confirmation, perhaps adjourning for, you know, one
24 additional hearing where we can take into consideration the
25 points raised by Mr. Murray today so that we can make sure

1 that we're not setting any undue precedent for the filing of
2 claims. And Mr. Murray is in one situation where he did
3 file some claims in 2021. Mr. Han, slightly different in
4 that his claims are filed in 2022.

5 So with each of these, we need to kind of go and
6 get the factual information, the fact that we're hampered
7 substantially in getting that information for folks that are
8 incarcerated, so balancing the time and effort that might be
9 needed, not knowing whether or not this will continue to
10 draw in additional claims in perhaps a number that might be
11 unworkable from a plan perspective, and given the, you know,
12 the Pioneer Factors and how far we are out now from the bar
13 date, I think still counsels in favor of holding these
14 claims in the abeyance. And we are more than willing to,
15 you know, undertake the effort at the right time to figure
16 out whether or not some of these claims should be, should be
17 allowed. And I understand, you know, the desire to have
18 some certainty with respect to whether or not we will be
19 moving forward, but based on our discussions with the
20 Unsecured Creditors Committee and others, we believe that
21 this is the right path.

22 THE COURT: All right. And let me ask if the
23 Official Committee of Unsecured Creditors has anything they
24 wanted to add?

25 MR. PREIS: Good morning, Your Honor. Arik Preis

1 from Akin Gump Strauss Hauer Feld, on behalf of the Official
2 Committee. No, I think we agree with the Debtors. I think
3 Mr. McClammy started his response by saying in light of some
4 of this information that may I have a bearing on how we deal
5 with these claims after they are held in abeyance, but
6 overall, we think the path right now makes sense.

7 THE COURT: All right. All right. So here's what
8 I, what I can tell you. So in response to the request that
9 Mr. Murray and Mr. Han have made, the Debtors and the
10 Committee have made the request that the Court enter a
11 proposed order that holds these two motions in abeyance,
12 which is a fancy legal word for just doesn't decide them now
13 and decides them later until a particular date. The date is
14 not very clear, unless you're a lawyer, and even then, it's
15 not entirely clear. But the idea is that it's a future date
16 that's at least 21 days after we have an idea of what goes
17 on with the plan of reorganization. Right?

18 So the plan of reorganization is on appeal right
19 now. Everybody's waiting for a decision on that. And that
20 really controls the fate of the case in terms of what
21 happens with the claims. And so the, so the explanation is
22 the Debtors and the Creditors Committee believe that this
23 approach will allow the Court to make an informed decision
24 on the motions, not only these motions, but frankly, any
25 other motions that seek to file late claims. Right? So

1 obviously these claims are very important to you, Mr. Murray
2 and Mr. Han, and they should be, and they're important.
3 That's what the bankruptcy is about, trying to figure out a
4 fair and equitable way to deal with claims of creditors in a
5 bankruptcy case. But, like all cases, you're not the only
6 creditors. There are other creditors. And in a case like
7 this, there's a huge number of creditors and we, as you may
8 or may not know in other hearings, there have been other
9 requests for late filed claims, as Mr. Murray, you
10 mentioned, and there may be some in the future. And so the
11 idea, I think, is to try to deal with them in a way that
12 well, it may at a certain point become more obvious that a
13 claim like yours, Mr. Murray, has factors that make it more
14 appropriate to grant, as opposed to less appropriate, that
15 as you filed something earlier than say somebody else,
16 you're in a similar bucket as to other folks who filed
17 claims at the same time.

18 There are a lot of different factors for a court
19 to consider in in trying to sort through any large number of
20 claims. So I think the idea and the suggestion is that to
21 hold off so that we can see the universe of claims that we
22 have to deal with at the appropriate time. And this will
23 allow the Debtors, the Creditors Committee, and frankly,
24 also me, the judge, to make the most informed decision that
25 I can about whether to grant a late filed claim and to what

1 extent and what are the principles and reasons for doing so,
2 for granting them or denying them. And that will also
3 prevent what's often referred to in bankruptcy cases as the
4 floodgates argument, which is that you have -- the basis
5 which you grant a late filed claim may apply to a huge
6 number of other people and then other claims are filed and
7 you really don't have a great process for figuring out how
8 to deal with that avalanche of claims that are filed after
9 the bar date.

10 So I think this approach is appropriate for a
11 couple of reasons. One is courts have discretion to whether
12 to allow late filed proof of claim. As has been mentioned,
13 this is equitable inquiry for a court, meaning we look at
14 fairness, fundamental fairness and we look at different
15 factors, Pioneer Factors named every case named Pioneer,
16 which is a Supreme Court case. The most important, which is
17 the reason for the delay, which both you, Mr. Murray and Mr.
18 Han, have talked about, and so I think the approach here is
19 one that makes a lot of sense for this case. It does mean
20 that Mr. Murray and Mr. Han, you'll have to wait to
21 ultimately get a conclusion on this and for that, I'm sorry,
22 but it's the most appropriate thing to do in terms of trying
23 to get the case right and deal with all claims as fairly and
24 equitably as I can.

25 And I note that this approach is consistent with

1 the approach that Judge Drain, who is the judge who
2 previously in this case has taken in prior circumstances.
3 There was a hearing in April 27th, 2022. It's on the
4 docket, the transcript at Docket 4845 and on Page 34 through
5 41 of that docket, on that transcript, he talks about
6 holding off on a particular proof of claim based on the fact
7 that there are other late claims that are going to be
8 addressed -- for example, the ones we have here today -- and
9 to try to come up with something that is most efficient and
10 most fair for all involved.

11 So I think that the suggestion that's been made
12 here is entirely consistent with Judge Drain's approach.
13 It's a fair one. And if you look at that transcript, there
14 was somebody there who was a veteran and who was had
15 different factors than Mr. Murray, you have, and Mr. Han,
16 you have, but again, there are a lot of claims to consider
17 in a case like this. We're trying to come up with something
18 that's consistent. If it's not consistent, then frankly
19 it's not fair. Right?

20 So it makes sense to see the claims that we will
21 have to deal with at one time as we get towards the
22 confirmation of any Chapter 11 plan of reorganization and
23 the effective date.

24 And so for all those reasons, I'm going to hold
25 off ruling on these motions. We're going to enter an order

1 that says that these motions are going to be held in
2 abeyance. Again, just a fancy way of saying that they're
3 going to be delayed until such time as we deal with all late
4 filed claims together. And you will get notice of that
5 hearing. There will be a list that the Debtors and the
6 Committee are going to keep of anybody who falls into these
7 circumstances. And you're, frankly, not the first claims to
8 sort of be subject to this process. As the April 27th
9 transcript makes clear, there's another claim, other claims
10 out there that are going to be treated the same way and
11 we'll make sure to get notice to you. And if for some
12 reason your situation changes where you currently are
13 located, please let the Debtors and/or the Committee know so
14 we can make sure that we get you and send you the
15 information that you need to take a look at when it comes
16 time to address this issue.

17 And so that's my ruling for all the reasons that
18 we've discussed. The one thing I would ask is there is a
19 proposed order that was submitted by the Debtors and the
20 Committee, and I would just -- how can I put this? To put
21 it bluntly, I would try to make it as plain language as
22 possible. These orders in bankruptcy cases are often very
23 technical for lots of good reasons. And so I would do the
24 best you can to try to make it as clear as possible for
25 anybody who's looking at it, what it means and why it is.

1 So, there might be, for example, before we get to this
2 awarded paragraphs, just an explanation of what of, of what
3 the reason is for holding off on this. I mention that just
4 because I suspect an order like this may be looked at by
5 other folks who are in a similar circumstance, or might have
6 to address this kind of issue in the future. And so we're
7 trying to get the word out. But I frankly, I think you can
8 you can pull language that you put in your motion response
9 and stick it in the order. So, so that would be helpful.

10 And so that's the Court's ruling on these two
11 proposed motions and we're going to hold off on them. And I
12 appreciate Mr. Murray and Mr. Han, you being on Zoom here to
13 discuss your motions and you'll be hearing from the Court as
14 soon as, and the Debtors and the Committee as soon as we are
15 ready to address these issues. And I thank you very much
16 for your patience.

17 MR. HAN: One question, Your Honor. So where am I
18 able to put the change of address so that I can get the new
19 information that's coming to me?

20 THE COURT: Sure. Let me let Mr. McClammy address
21 that so he gets it precisely right. Mr. McClammy, if you
22 would address that.

23 MR. MCCLAMMY: Sure, do you have access to the
24 website for the bankruptcy?

25 MR. HAN: Yes. The Purdue Pharma website?

1 MR. MCCLAMMY: Purdue Pharma and then the claims
2 website. There will be information there. But in addition,
3 you can find on the Davis Polk website my email, if you look
4 by my last name.

5 MR. HAN: Yes.

6 MR. MCCLAMMY: If you send me an email, I can make
7 sure that you get directed to the right place.

8 MR. HAN: Okay. All right, thank you.

9 THE COURT: All right, excellent question.
10 Anything else from Mr. Murray or Mr. Han, any other
11 questions you have? All right, Mr. Murray.

12 MR. MURRAY: Your Honor, would you be opposed to
13 me just filing a written reply to this so that it's there
14 waiting for the hearing, whatever happens.

15 THE COURT: Well, you can do that. Obviously
16 you're free to file or whatever you'd like. The one thing I
17 would say is that you will get notice of whatever hearing we
18 have on this issue. And at that point, there may be some
19 guidance or there may be some further developments in terms
20 of how late filed claims are going to be sort of evaluated
21 and looked at. But obviously, you have some information
22 that you provided here today and if you want to submit that
23 in a reply, you can file it the way you filed your motion
24 today and that's fine. And then get on the docket and we'll
25 keep track of that for any future hearing on these issues.

1 MR. MURRAY: I still think it might be prudent to
2 wait from you're saying. So I'll just hold off until I get
3 notice of the hearing.

4 THE COURT: I'll leave it, I'll leave it to you,
5 Mr. Murray. Either way is fine. Again, I know sometimes
6 people say I'm ready to do this now. I'm going to do it
7 now. I want to do it now and that's perfectly fine and if
8 you want to wait, you can do that. Either way it's fine.
9 As long as it gets on the docket, we will keep track of it
10 for future hearing.

11 MR. MURRAY: Okay, thank you, Your Honor.

12 THE COURT: All right, thank you. All right,
13 thank you very much. With that, the Court is going to move
14 on to the next motion. And again, thank you to Mr. Murray
15 and Mr. Han for being here. And so, Mr. McClammy.

16 MR. MCCLAMMY: Thank you, Your Honor. The next
17 motion on the agenda is the motion to reclassify which was
18 filed in redacted form by the movement with a request to
19 protect their identity. The movant also filed a reply,
20 which is docketed at Number 5018. And I believe movant, JO,
21 is present in the virtual courtroom today if Your Honor
22 would like to hear from them first.

23 THE COURT: All right. Yeah. Let me find out who
24 is who is here on behalf of this, of this, to prosecute this
25 motion. And I have read all the papers and I understand the

1 request is one to reclassify the claim. And as I think the
2 papers filed by the Debtors and the Committee make clear
3 under the law, when you reclassify a claim from unsecured to
4 priority because priority gets paid first, that's considered
5 a claim that if it's after the bar date, that it is a late
6 filed proof of claim. So it falls under that standard. And
7 so again, I did read the papers that were filed, but if you
8 want to briefly address anything else that you wanted to
9 mention or highlight, I'm happy to hear from you.

10 MR. MCCLAMMY: So on our end, Your Honor, I think
11 the papers certainly sufficiently covered it. The only
12 thing I think I would note is particular focus on, you know,
13 this particular claim and this is not to address the merits
14 of the claim at all, but rather the fact that, you know, the
15 basis that's cited here for having the claim reclassified,
16 the guilty plea, we do not believe given the timing would
17 support the filing of this claim late nor do we believe as a
18 matter of the ultimate merits that would justify anyone in
19 having their claim, that was an unsecured claim, given
20 priority status. It wouldn't qualify under 507 for being
21 treated with priority. And for those reasons, we think that
22 the treatment under the plan, should this claim be allowed,
23 is the proper classification for this claim and that it
24 should remain an general unsecured claim and that it should
25 be treated similarly situated claimants in this case. And

1 with that, I think that he would rest.

2 THE COURT: All right, let me ask if the Claimant
3 wishes to be heard?

4 MS. OSTERLOH: Yes I do. Can you hear me?

5 THE COURT: Yes, I can. And again, ma'am, I've
6 read everything that you've submitted. So you don't have to
7 feel the need to explain that all to me. But certainly if
8 you wanted to add something or highlight something, I'm
9 happy to hear you.

10 MS. OSTERLOH: Okay. I do want to add that I feel
11 that the motion to reclassify my claim should not be
12 construed as a late claim motion. It was filed after the
13 bankruptcy court's general bar date of 7/30/22. Also, I
14 don't believe that it should be continued as amended, timely
15 file proof of claim. The reason being is I feel that I had
16 submitted enough evidentiary documentation to prove my claim
17 on behalf of my deceased father. Also, too, the proof of
18 claim forms that were sent, they didn't give me any other
19 option but to file for general unsecured claims. So that's
20 just a couple of things that I wanted to point out. As we
21 know, you know, it's been over two years now. And I have
22 been waiting, just as everyone else has been waiting. I'm
23 one of the 10 percent that did claim an amount on my claim
24 because of the evidentiary documents that I had submitted.
25 I feel that if I did not have that type of proof or

1 documentation for evidence, then I more than likely would
2 have been okay with just general unsecured claim instead of
3 priority unsecured claim. So my classification I feel is
4 different from outlines that are laid out for the general
5 unsecured claims.

6 THE COURT: All right, thank you very much, ma'am.
7 I appreciate your submissions. I appreciate you being here.
8 I'm very sorry for the loss of your father. And you have my
9 condolences.

10 MS. OSTERLOH: Thank you.

11 THE COURT: I don't know if there's anything from
12 the Committee? The response I got from the -- well, I guess
13 it's the Debtors objection, but I'll ask I guess anyway,
14 just to see if the Committee has anything else that it
15 wanted to weigh in on.

16 MR. PREIS: No, thank you, Your Honor.

17 THE COURT: All right. All right. So given how
18 frequently these issues are going to come up with claims, I
19 prepare in advance to sort of understand the arguments and
20 therefore try to make bench rulings that is rulings, verbal
21 rulings while I sit here on the bench rather than address it
22 at a later time because I know folks are here now.

23 So I'm going to do that now. In this motion, the
24 Claimant states, as has been explained also here at the
25 hearing, that you believe the claim should be reclassified

1 as a priority unsecured claim to receive proper restitution
2 due to what you talk about is the criminal activities of
3 Purdue Pharma LLP and should be classified as a general
4 unsecured claims. And as I sort of mentioned earlier,
5 amendments to proofs of claim that change the nature of the
6 claim from an unsecured claim to a priority claim are
7 considered under the law to set forth a new claim. And so
8 motions seeking to reclassify to a priority claim are
9 treated as a motion to file a claim, file proof of claim.
10 And so -- and occasionally I'm going to cite cases just to
11 explain that I'm following the law that exists.

12 So see Waske, W A S K E, versus Lehman Brothers
13 Holdings, Inc., 2021 W.L. 4523495 at star four, SDNY,
14 September 30th, 2021. So turning to the late filed proof of
15 claim, courts have discretion to allow those only on a
16 showing of excusable neglect and that standards set forth,
17 the relevant standards in Federal Rule of Bankruptcy
18 Procedure 9006, Subsection B. And in the Supreme Court's
19 decision, Pioneer Investment Services Company versus
20 Brunswick Associates Limited Partnership, that case is at
21 507 US 380 at 382. It's a 1993 case. And as that case and
22 other cases explained the burden of meeting the Pioneer test
23 for excusable neglect, it falls -- it's on the claimant.
24 See the Enron case, In Re Enron, 419 F.3d. 115 at 121, 2nd
25 Circuit 2005. And so when looking at the Pioneer test, the

1 courts look at a variety of factors. It's an equitable
2 inquiry that is an inquiry about fairness taking into
3 account all the relevant circumstances that are guided by
4 what are, are set forth as factors in the Pioneer case.

5 And those factors, there are a number of them.
6 One is the danger of prejudice to the Debtor. Two is the
7 length of the delay and its potential impact on judicial
8 proceedings. Three is the reason for the delay, including
9 whether it was within the reasonable control of the movant.
10 And four is whether the movant acted in good faith.

11 The case law here in the Second Circuit on the
12 Pioneer test makes it clear that it's taken a hard line on
13 the test and that's set forth in the Enron case, 419 F.3d.
14 at Pages 122 to 123, citing a variety of cases. And the
15 Second Circuit focuses its excusable neglect standard on the
16 third factor, that is the reason for the delay. And
17 certainly nobody here argues that the Claimant argued --
18 acted in bad faith in any way, shape or form.

19 So in this case, the Court is certainly
20 sympathetic to all those affected by the opioid crisis and
21 obviously the tragedy here is compounded by the loss of the
22 Claimant's father. But I can't grant this motion given the
23 facts that I have and applicable law for a couple of
24 reasons.

25 So the first deals with the Pioneer factors and

1 the most significant of the factors, the reason for the
2 delay. And there's really no justification in the motion
3 for what, what is a 19-month delay. And so there's a
4 reference to a New York Times article that's published in
5 October 21st of 2020 that relates Purdue's plea agreement
6 with the Department of Justice, but there's still a 16-month
7 delay after that article and before the filing of the
8 motion.

9 And without a justification for that delay, the
10 Court has no choice but to deny the motion given that the
11 delay here is considered substantial under the law. It's
12 more than a year.

13 The second reason for my denial is that the reason
14 that's explained for asserting a new priority claim is
15 produced plea agreement. But if that's about basis to
16 change this claim here for unsecured to priority, that would
17 really apply to virtually all of the Debtors' creditors and
18 risk opening the floodgates to similar assertions of
19 priority based on the guilty plea for the over 130,000
20 similarly situated personal injury claimants. And for that
21 proposition, I'll again cite the Enron case, 419 F.3d, 132,
22 133. In that case, the court denied a late filed claim
23 saying that the potential claim was not distinguishable from
24 other claims such that permitting the late filing would open
25 the floodgates and prejudice the estate.

1 And so in reaching this decision, the Court notes
2 that there was nothing in the original proof of claim that
3 indicated basis for being a priority claim. And, in fact,
4 the claim here, like thousands of other personal injury
5 claims, is based on a personal injury related to the taking
6 of opioid pain medications manufactured by the Debtors. And
7 in the plan of reorganization that's on appeal, that is sort
8 of where we are in the case. It classifies such opioid-
9 related personal injury claims and other similar cause of
10 action related to that that arose prior to the bankruptcy
11 filing as prepetition unsecured claims. So the case treats
12 all these claims as unsecured claims. So that's the other
13 reason for the denial of the motion.

14 And certainly the plan of reorganization and the
15 confirmation order is all on appeal and is subject to
16 whatever ruling the Second Circuit makes on appeal. But I
17 will note that no one's challenged the classification
18 scheme, that is how you look at the claims that were filed
19 in the case and how they are being treated. And in
20 particular here, the classification of personal injury
21 claims such as this one is general unsecured claims.

22 So again, ma'am, you have my sympathy. I
23 appreciate you being here and I appreciate how difficult it
24 must be to talk about all this. But I thank you for
25 submitting the papers that you did, the motion and the

1 reply, and for being here today. I'm sorry I don't have
2 better news for you. But again, my job is to apply the law
3 as best I can based on the facts and circumstances of the
4 case that I have in front of me.

5 So with that, that's the Court's ruling on that
6 motion. With that, I will turn it back over to you, Mr.
7 McClammy, I think to address what's next.

8 MR. MCCLAMMY: Thank you, Your Honor. The next
9 motion is the motion to terminate the temporary injunction
10 and that's going to be handled by Mr. Kaminetzky.

11 THE COURT: All right. Mr. Kaminetzky.

12 MR. KAMINETZKY: Hi. Good morning, Your Honor.
13 For the record, Benjamin Kaminetzky of Davis Polk on behalf
14 of the Debtors. Mr. Hill filed three related motions
15 related to lifting the preliminary injunction. Perhaps we
16 should turn the podium over to Mr. Hill before I respond.

17 THE COURT: All right. So let me do this just for
18 Mr. Kaminetzky's benefit and Mr. Hills' benefit. I've read
19 all the papers that have been submitted. I think I
20 understand the argument, which is that Mr. Hill would like
21 this preliminary injunction to be lifted so that he can
22 pursue his individual claim. And certainly I understand
23 people's desire for justice and their desire to proceed with
24 those things as soon as they can. Obviously, his request
25 comes in the backdrop of in the context of this case and the

1 large amount of litigation that exists in this case. And
2 part of, part of a bankruptcy case is to try to deal with
3 those things and people who have lawsuits against the
4 Debtors and to try to deal with them consistently. So, Mr.
5 Hill, I'm happy to hear from you. I just want to let you
6 know you don't need to repeat anything that's in your
7 papers. I've read all the papers, but I'm happy to hear
8 from you briefly if you'd like to highlight something or add
9 something new. So, Mr. Hill.

10 MR. HILL: Yes, Your Honor. Thank you. Did you
11 say that my case is to terminate the entire injunction or
12 just the injunction based on the Purdue Frederick Company,
13 like my motion states?

14 THE COURT: Well, it's to, as I understand it, to
15 lift the injunction as to you for what you want to do, which
16 is your lawsuit against that particular entity.

17 MR. HILL: It's a motion terminate against the
18 Purdue Frederick Company, who actually -- so probably not
19 waste a whole lot of anybody's time -- it's actually a
20 motion to move forward against the 2007 misbranding
21 OxyContin convicted felon, who caused my damages listed in
22 my New Jersey case that's been enjoined because I am a
23 person who was injured from those crimes that they pled
24 guilty to in 2007. There's a lot of questions of is that
25 the Purdue Frederick Company or is it the Purdue Frederick

1 Company, Inc.? Everything I presented in my papers as far
2 as plea agreements and possible indictments, all list the
3 defendant as the Purdue Frederick Company listed in the case
4 caption showing where the legal entity for defendant would
5 be. So despite the Debtors' opposition and their claims
6 that no, no that's not true, look over here, I have seen no
7 proof from them other than what I show that the defendant in
8 the 2007 misbranding OxyContin is the Purdue Frederick
9 Company. No comma, no Inc. Those are the facts that if you
10 look at, if we, you know, if we went through every exhibit,
11 that's what we'd see. So my question --

12 THE COURT: I understand that. I think there's a
13 discussion in the response that you got and it's on page, I
14 guess its six, if you look at the page numbers at the
15 bottom, talking about that very issue. And I think and what
16 I've been told and Mr. Kaminetzky can get into it in more
17 detail, is that the preliminary injunction covers this
18 entity. And the idea is that it's an entity, it's a
19 "related party" subject to the preliminary injunction. And
20 that's the Purdue Frederick Company, Inc., but it's
21 registered to do business using the alternative name, the
22 Purdue Frederick Company. And in fact, the complaint cited
23 in the opposition by the Debtors identifies the Purdue
24 Frederick Company, Inc. and variants, the Purdue Frederick
25 Company and Purdue Frederick Company, Inc. as related

1 parties.

2 MR. HILL: Your Honor, may I --

3 THE COURT: So I think that's the response that
4 that I have is that this entity is covered by this
5 injunction. And I guess that's what's been presented to me
6 by the other side.

7 MR. HILL: Your Honor, from what I saw in their
8 objection, I see no proof that the defendant is not the
9 listed defendant on the actual plea agreement and the actual
10 October 6th, 2006, indictment or the Exhibit J letter from
11 their attorney. It's very clear there's no, there's no
12 question. The 2007 misbranding OxyContin convicted felon is
13 the Purdue Frederick Company. And my motion --

14 THE COURT: And again, I have, I don't think
15 that's quite a fair statement saying that they presented
16 nothing because there's a whole page of explanation on Page
17 6.

18 MR. HILL: I didn't see anything under Document
19 82. Can we get to that? The first thing they list or the
20 second thing is Document 82. I couldn't find it in the
21 adversarial or the regular case docket.

22 THE COURT: All right, okay. Give me a second,
23 Mr. Hill. What I'm looking at is the Debtors opposition.
24 It's at Docket 372 on the Case 198289 and that's the Purdue
25 Pharma versus Commonwealth of Massachusetts et al. adversary

1 proceeding. And on Page 6 of that pleading, which was filed
2 on August 12, it has, the whole page is an explanation
3 explaining the Debtors view about your argument as to the
4 Purdue Frederick Company being, well --

5 MR. HILL: Yes, that's their argument. They
6 present no proof, Your Honor.

7 THE COURT: The point is what's covered by the
8 preliminary injunction.

9 MR. HILL: Right. The people on the related party
10 list. They are not -- the Purdue Frederick Company is not
11 on that list. From what I understand --

12 THE COURT: All right. I understand your
13 argument.

14 MR. HILL: Okay. So can we can we get back to
15 where Docket 82 is? The whole premise on the fact that what
16 you just said and everything you decided and their Debtors'
17 objection is based on Docket 82 at No. 4. I'd like to hear
18 from Mr. Kaminetzky what that is.

19 THE COURT: All right. So what else would you
20 like to tell me before I hear from Mr. Kaminetzky? Because
21 I'm not going to go back and forth. That doesn't really
22 work here in court. Anything else that you want to address
23 Mr. Hill before I hear from the other side?

24 MR. HILL: Yes, I would like to know is that the
25 Court's opinion or does the Court rule that -- who does the

1 Court find is the 2007 misbranding OxyContin convicted
2 felony? I guess that's my question.

3 THE COURT: I understand that's your question.
4 Yes, I understand that. All right. So I think at this
5 point it makes sense to hear from Mr. Kaminetzky.

6 MR. KAMINETZKY: Good afternoon, Your Honor, now
7 that's it afternoon this afternoon. Again, Benjamin
8 Kaminetzky of Davis Polk for the Debtors. So I think Your
9 Honors got this. There's no great mystery here. There's
10 Purdue Frederick Company, Inc. doing business as Purdue
11 Frederick Company and unfortunately, from time to time,
12 people insert a comma before the Inc., although officially,
13 as I understand it, there's no comma before the Inc. But
14 these three entities are one entity. There is no great
15 mystery, secret, conspiracy or anything else.

16 In the original preliminary injunction complaint
17 that was filed, we attach a chart, a very lengthy chart of
18 all the different actions and all the related parties. And
19 on that chart, number one related party is Purdue Frederick
20 Company, Inc.. Number three on that chart is Purdue
21 Frederick Company Inc. doing business as the Purdue
22 Frederick Company. If you work your way down the chart,
23 there's Purdue Frederick Company, Inc. as well. What we did
24 is we base took the captions of all the cases. You recall
25 Your Honor, we're talking about 2600 cases that

1 (indiscernible) was facing prepetition at a cost of about \$2
2 million of legal fees a week. And we took all those
3 captions and we put them in a related parties chart and
4 Judge Drain after a lengthy hearing rule that all the
5 actions against all the related parties are enjoined. And
6 that included, first and foremost I should say in terms of
7 related parties, the Purdue Frederick Company in all its
8 various iterations of Inc., no Inc., comma Inc., et cetera.
9 There's never been any ambiguity whatsoever with respect to
10 the Purdue Frederick Company that that refers to the same
11 entity.

12 To the extent the comma caused confusion, you
13 know, I apologize, but I only recently learned that our name
14 is Davis Polk and Wardwell LLP, not Davis Polk and Wardwell
15 comma LLP. So, you know, the mistaken comma from time to
16 time happens.

17 THE COURT: Am I understand correctly that comma
18 or no comma, both are listed in the related parties chart?

19 MR. KAMINETZKY: Yeah, comma, no comma, as well as
20 doing business as just Purdue Frederick Company without an
21 Inc.

22 MR. HILL: They did not provide that chart, Your
23 Honor.

24 THE COURT: Mr. Hill, I'm hearing from Mr.
25 Kaminetzky and when he's done, I'll ask you if there's

1 anything else. I can only hear from one party at a time.

2 That's the way court works.

3 MR. KAMINETZKY: Yeah, it's just to answer of Mr.
4 Hill, it's -- our complaint was filed with that chart. So
5 it's the first document in the preliminary injunction
6 adversary proceeding. And, just, Your Honor --

7 THE COURT: And I understand that's what cited on
8 Page 6 of your opposition that it cites the complaint,
9 Docket Number 1, Exhibit B, Page 2 and Page 14 that lists
10 the Purdue Frederick Company Inc., no comma and variant
11 Purdue Frederick Company, and variant Purdue Frederick
12 Company, Inc. as related parties.

13 MR. KAMINETZKY: Exactly, Your Honor. And just to
14 note that the first order granting the preliminary junction,
15 what the judge did, he defined -- when Judge Drain did --
16 and I'm looking at Pag 2 of that order pursuant to 105
17 granting in part, the motion for preliminary injunction, he
18 defined related parties by just looking at that exhibit,
19 Exhibit B to the complaint, which included, as Your Honor
20 noted once again --

21 THE COURT: All right. Can you identify exactly
22 where in the order that is?

23 MR. KAMINETZKY: In the original order, that's
24 Docket Number 82, on Page 2 of 12. It was entered on
25 October 11th, 2019. So it's again Docket Number 82 on the

1 second page. That's how Judge Drain defined related parties
2 by --

3 THE COURT: And I would note, I think, again to
4 get back to your Page 6 of your opposition, it references
5 Docket 82, the first order, and then talks about enjoining
6 cases against related parties as identified in Exhibit B to
7 the complaint. Do I have that right?

8 MR. KAMINETZKY: That's correct. And what Judge
9 Drain subsequently asked us to do is that just to make it
10 easier for folks, could you just, you know, put in a
11 footnote all the related parties, which we happily did in
12 subsequent preliminary injunction orders. And that's the
13 famous Footnote 2, which, of course, includes Purdue
14 Frederick Company Inc. which is the official name, or the
15 formal name of the company, of the related party. So that's
16 the explanation, Footnote 2.

17 So, you know, Your Honor, other than the, you
18 know, other than that, I think the motion is very simple. I
19 mean as Your Honor -- as we've heard, we were facing this
20 litigation tsunami that one couldn't imagine of 2600 cases.
21 And what the preliminary junction did was it stopped the
22 frantic race to the courthouse in every single jurisdiction
23 imaginable, state, federal, administrative courts, et
24 cetera, and said that what we're going to do here is when
25 Your Honor talked about with respect to the last series of

1 motions, is try to equitably distribute the assets of the
2 estate among the many 100,000 claimants in this case -- we
3 have over 614,000 proofs of claim -- and put a stop to the
4 race to the courthouse.

5 So, Your Honor, there's really no basis for, you
6 know, while we're extraordinarily sympathetic to Mr. Hill,
7 we're also sympathetic to the hundreds and thousands of
8 other alleged victims of the opioid crisis. And what we
9 want to do here is what's fair and right, is pursue to the
10 plan of reorganization that was mediated and negotiated with
11 representatives from all the --

12 THE COURT: And just to clarify what I think is
13 pretty straightforward, well, not clarify, confirm what's
14 pretty straight forward is that the 28th amended order and
15 the orders before that, after the first one, all are
16 extending the original injunction that was entered and that
17 we were discussing at Docket 82.

18 MR. KAMINETZKY: Yes, Your Honor, absolutely.
19 There's nothing more to say other than yes. So Your Honor,
20 that's the long and short of it. We can't let one person,
21 as sympathetic as we are, you know, jump the line, have the
22 injunction lifted because that would open -- we've talked
23 about floodgates -- but that would certainly open the
24 floodgates of other victims of the opioid crisis to ask that
25 they too be able to pursue their surgical unique claim. And

1 as Judge McMahon ruled when she affirmed Judge Drain, that
2 would, you know, to lift the junction as to one, would put
3 the Debtors in the same situation.

4 THE COURT: I've got it. So Mr. Hill, I've heard
5 from Mr. Kaminetzky and he has walked me through the
6 information on Page 6 of the opposition, which I mentioned
7 to you. And so I'm happy to hear anything you have in
8 response to that that's new. You don't need again to repeat
9 arguments that you discussed before. Mr. Kaminetzky went,
10 so briefly, Mr. Hill.

11 MR. HILL: Yes. When Mr. Kaminetzky started
12 talking, he said that the related party listed the Purdue
13 Frederick Company Inc. doing business as Purdue Frederick
14 Company. That's not the Purdue Frederick company.
15 Secondly, the Purdue Frederick Company is not listed
16 anywhere as a related party.

17 THE COURT: But he just identified Exhibit B which
18 lists three variations of the name.

19 MR. HILL: What that does, Your Honor, is that's
20 from one of their, one of their orders and it's listing the
21 people that were sued. That's not the related party list.
22 That is a running tally in that column that they're calling
23 related parties.

24 THE COURT: But the order, but the order covers,
25 the order Docket 82, which is what you kept referring to,

1 enjoins cases against related parties as identified in
2 Exhibit B to the complaint.

3 MR. HILL: Okay. So if we're going to say that
4 the defendant -- I'm saying my case should be settled
5 pursuant to the 2007 plea agreement as I provided. I'm
6 saying that that is the Purdue Frederick company. If you're
7 saying that the Purdue Frederick Company Inc. is a related
8 party, my second motion is then --

9 THE COURT: That's not what I'm saying. Mr. Hill,
10 at a certain point, I think we're going around and around
11 repeating ourselves.

12 MR. HILL: Well, I would just like to seek --

13 THE COURT: Let me finish. I'm going to stop.
14 I'm going to let you finish briefly. I think I understand
15 your argument about the distinction and you did file
16 extensive papers, which I have looked at, at Docket 3369 and
17 elsewhere. So I think I understand the argument. So I'll
18 give you a moment to finish up.

19 MR. HILL: Okay. The second motion I filed or
20 actually the first motion I filed is against Purdue
21 Frederick Company Inc. under the theory that even though
22 they are listed as a related party, my case should be
23 settled in accordance with the 2007 plea agreement as
24 provided for, as I've provided in many exhibits in my case.
25 So if you're deciding that the Purdue Frederick Company Inc.

1 is the related party and the Purdue Frederick Company is the
2 same thing, okay, that's fine. I'm not Columbo here. I'm
3 stating that they have to understand my case must be settled
4 as ordered in the 2000 -- July 23rd, 2007, Judge Jones
5 opinion and order specifically states cases like mine that
6 were -- I can prove it, my OxyContin history report proves
7 that I was prescribed it in 2000 at the time the 2007
8 misbranding Oxycontin convicted felon was convicted.

9 THE COURT: Mr. Hill, nobody is -- this is not a
10 hearing on the merits of your claim. Nobody is debating
11 that. This is just a question about the preliminary
12 injunction that was entered in the bankruptcy case to
13 prevent litigation from going forward in other forums and
14 let me just give you a little bit of background. People
15 don't have a lot of experience with bankruptcy hopefully in
16 life. And so it's a very different kind of thing.

17 What often happens is there may be a lot of
18 litigation that's going on before a debtor files for
19 bankruptcy. And the idea is rather than someone's recovery,
20 whatever they get from a debtor being governed by one case
21 versus another case, which is often a function of how
22 quickly they can get their case filed and where their case
23 is pending, it's dealt with in bankruptcy so that similar
24 claims are treated similarly.

25 MR. HILL: Yes.

1 THE COURT: And so as a result of that principle,
2 what often happens, and happened here in the context of this
3 preliminary injunction, is to say that we're going to hold
4 off on all the individual litigations that people have
5 pending against the Debtor and related entities so that
6 everybody's claims can be dealt with in a more consistent
7 fair way here in the bankruptcy court. So no one is
8 challenging and I don't see anything in the papers or
9 anybody said that you don't, you weren't involved in that
10 other case and that there wasn't a guilty plea, and that
11 there's, you know, you have a civil action for money
12 damages, and all that or anything challenging the merits of
13 your claim. So I just want you to understand that because
14 that's important. This is really a motion about procedure,
15 which is about what's happening in the bankruptcy case
16 versus what's happening outside of bankruptcy to try to deal
17 with people who have claims in a fair and equal way. And so
18 I just want you to understand that, because I can understand
19 why that would be -- you think somebody's challenging your
20 claim, the fact that the merits, whether you're right in
21 what you're arguing about as to this company. That's very
22 upsetting. And so I understand, I understand that, but
23 that's not what today's hearing is about. So no one, I'm
24 not, no one's argued anything like that to me.

25 So, what I really have here is a procedural

1 question about this preliminary injunction and what it's
2 trying to do in the bankruptcy case for purposes of how
3 claims are treated and uniformly, and that people are not
4 going to be allowed to go pursue their litigations outside
5 of court because we're going to try to pursue something
6 that's consistent claim by claim as we can make it here in
7 the bankruptcy case. So I just want you to understand what
8 we're doing here and what we're not doing here.

9 MR. HILL: Your Honor, I thought what we were
10 doing here was hearing my motion because it's pursuant as it
11 says in the title of my motion. I wanted the motion
12 terminated because it's pursuant to be settled in accordance
13 with the 2007 plea agreement.

14 THE COURT: I got it.

15 MR. HILL: I haven't heard you mention that. And
16 I haven't heard them oppose that.

17 THE COURT: All right. Anything else, Mr. Hill?

18 MR. HILL: Am I wrong, Your Honor? Did you bring
19 that up?

20 THE COURT: Mr. Hill, I've said what I've said and
21 I'm going to give a ruling in a minute and I'll explain my
22 reasons for my ruling when I make a ruling. So, anything
23 else you want to argue briefly?

24 MR. HILL: I don't see the point, Your Honor.

25 THE COURT: So --

1 MR. HILL: You don't want to look at any exhibits,
2 right?

3 THE COURT: Mr. Hill. Okay, I'm going to ask that
4 Mr. Hill be put on mute. I'm not here to antagonize you or
5 to have you antagonize me. We're trying to be civil here.
6 And so, yes, as I start stated when I came on the bench
7 here, I've read all the papers, I have read everything that
8 you've submitted.

9 All right, so the time has come for the Court to
10 make a ruling. So given all the facts and circumstances
11 here in this case, Mr. Hill's request for relief to modify
12 the preliminary injunction are denied. So I'll start with a
13 little bit of history. On April 29th, 2022, the Court
14 entered the 28th amended order extending the preliminary
15 injunction. And in doing so, found that the prospects of
16 the Debtors' reorganization would be irreparably damaged if
17 the injunction were lifted now before the Second Circuit's
18 decision and pending appeals relating to the Debtors' plan
19 of the organization. And so that finding and conclusion was
20 stated at the April 27th, 2022, hearing and you can see that
21 in the transcript at Page 20. And that order was the latest
22 in a series of orders, again, it's the 28th, that was based
23 upon the legal and factual record developed in the case.
24 And this includes evidentiary submissions, a full-day
25 evidentiary hearing, and argument on October 11th, 2019, and

1 subsequent hearings over a nearly three-year span in these
2 bankruptcy cases. On each occasion, and with the
3 overwhelming support of creditors, the Court concluded that
4 the Debtors have a reasonable prospect of a successful
5 reorganization. And that the preliminary injunction is key
6 to that, that is if the preliminary injunction were allowed
7 to expire, and the massive litigation that existed before
8 the bankruptcy cases were filed, that was allowed to
9 resume., the years of effort in this case would almost
10 certainly be wasted.

11 And that was discussed again at the April 27th,
12 hearing on Page 20, which discussed in March 23rd, 2022,
13 hearing, that transcript, at Page 28, December 29th, 2021,
14 Hearing, that transcript at Pages 83, 81.

15 And so on each of these occasions, the Court
16 determined that the risk to the Debtors, the estate, and to
17 creditors outweighed any harm that would occur from pausing
18 litigation outside this Court, which was uncoordinated,
19 somewhat chaotic, and basically the classic race to the
20 courthouse that bankruptcies are trying to prevent. And
21 that, therefore, the public interest and bankruptcy policies
22 of maximizing value and equitable distribution to creditor
23 weighed in favor of the injunctions. And again, you can
24 look at the April 27th, 2021, hearing transcript, Page 20;
25 March 23rd, 2022, hearing transcript at Page 28; February

1 1st, 2022, hearing transcript, Page 21 and 22; and the
2 December 29th, 2021, hearing transcript at Pages 80 and 81.

3 And as a practical matter, nothing has changed
4 since the 28th amended order extending the preliminary
5 injunction was entered. And nothing's changed that provides
6 a reason to reach a different conclusion now about the
7 preliminary injunction.

8 So Mr. Hill seeks to modify the primary injunction
9 to allow him to prosecute in a state court action against
10 one of the Debtors' related parties, the non-Debtor, the
11 Purdue Frederick Company Inc. or as he refers to it, the
12 Purdue Frederick company. He sued a number of Debtors and
13 related parties in New Jersey State Court in September of
14 2019, just a few days before the Debtors filed this
15 bankruptcy. And he sued for injuries that he alleges he
16 suffered on account of taking OxyContin.

17 And, I -- again, today's hearing is not about the
18 merits of those allegations. He certainly has my sympathy
19 for his circumstances as do other victims in this case. Mr.
20 Hill, I do note, didn't object to the Debtors' initial
21 motion for a primary injunction. And he didn't object to
22 any of the subsequent motions to extend it up to today, but
23 now he asked to exclude his claims from the preliminary
24 injunction so he can pursue his state court litigation.

25 But there are several problems with that. First,

1 granting him an exception to the preliminary injunction would
2 open the floodgates to other similarly situated claimants,
3 that is people who are victims of the alleged actions of the
4 Debtors here. And by risking -- by opening the floodgates
5 to numerous individual lawsuits and allow those to go
6 forward that existed before the bankruptcy, that would risk
7 irreparable harm to the estate. It would also risk
8 irreparable harm to the creditors who would be subject to a
9 much diminished assets for the Debtors' estate, given the
10 amount of money that would be spent litigating those
11 individual claims one by one by one, something that is
12 commonly referred to in bankruptcy as the litigation burn.
13 And all that would no doubt hopelessly undermine the Debtors
14 reorganization.

15 Secondly, it would be fundamentally unfair to
16 grant the relief here to the many thousands of other
17 predators. So when the Debtors sought the preliminary
18 injunction, plaintiffs in more than 2600 cases against the
19 Debtors and related parties were, as discussed, racing to
20 prosecute those cases in courthouses across the country.
21 And in each case, they were seeking to maximize their share
22 of any value that they could recover from the Debtors and
23 the related parties. What the preliminary injunction does
24 is allow that chaotic and fundamentally unfair process to be
25 replaced by a process that seeks to distribute value to the

1 public and private creditors with an equitable distribution
2 of recovery among all claimants as best as we can do that.

3 And I note that the Court's opinion here, this is
4 consistent with the rulings that Judge Drain has made. It's
5 also consistent with the rulings, the observations that
6 Judge McMahon has made. So, in observing her opinion, in
7 her opinion affirming the preliminary injunction, she noted
8 specifically that "lifting the stay" even for one party
9 "would soon engulf the Debtors and the bankruptcy court in
10 litigation challenging the injunction's application to
11 similar cases." And that's in Dunaway versus Purdue Pharma,
12 LP, 619 B.R. 38 at 60, SDNY 2020. So even litigating
13 numerous exceptions to the preliminary injunction would
14 itself harm these estate because you would have an endless
15 churn of litigation here in the bankruptcy court, as
16 potentially up to the entire amount of folks who have
17 litigation outside of bankruptcy court. The 2600 cases
18 could come in and make their pitch as to why they should be
19 exempted from the preliminary injunction.

20 And all those efforts, all that litigation would
21 risk restarting a value-destructive and chaotic litigation
22 process that existed before the preliminary injunction would
23 issue. And granting the relief here would jump Mr. Hill in
24 front of more than 130,000 other personal injury claimants,
25 a result that is hard to imagine and is seen as unfair even

1 assuming all of the claims that Mr. Hill has are completely
2 on merit.

3 So one last point is worth addressing. Mr. Hill
4 argues that he should be permitted to pursue the state court
5 action and he makes much of the various names that we've
6 discussed: the Purdue Frederick Company versus the Purdue
7 Frederick Company, Inc., versus the Purdue Frederick Company
8 Inc. with no comma, saying that the entity he wants to sue
9 is not subject to the preliminary injunction.

10 The Court disagrees. The Purdue Frederick Company
11 Inc. with no comma, is the entity that pled guilty in 200,
12 and is, in fact, an entity subject to the preliminary
13 injunction. So you can look at the 28th amended order,
14 Docket 356 at Page 2, Note 2, specifically listing that
15 entity. But the Court also knows the Purdue Frederick
16 Company Inc. is registered to do business using the
17 alternative name of the Purdue Frederick Company. And that
18 name has been identified from time to time with Inc. or
19 without an Inc.

20 But, in any event, if you go back to the
21 complaint, Docket Number 1, Exhibit B, which lists the
22 related entities, it lists the Purdue Frederick Company
23 Inc., no comma, and then variants of Purdue Frederick
24 Company as well as the Purdue Frederick Company, Inc. as
25 related parties. It's that list that was used in the first

1 order at Docket 82 as referencing what is covered by related
2 entities. And so it's pretty clear to the Court that the
3 entity that is involved here with Mr. Hill's lawsuit is
4 covered and indeed, one can't think of any reason why it
5 wouldn't be. So even to the extent that there was a
6 misplaced comma or period somewhere, the whole notion behind
7 the preliminary injunction is to prevent lawsuits outside of
8 bankruptcy court related to harms from OxyContin and related
9 claims to be prevented from going forward while we attempt
10 in bankruptcy court to do the best we can to come up with a
11 plan of reorganization and a path forward that compensates
12 victims for their injuries in a way that is as equal and
13 fair as we can make. So there there's really no reason why
14 one particular litigation out of the 2600 would be somehow
15 exempted from the preliminary injunction. That, in fact,
16 makes no sense at all.

17 So I understand how strongly Mr. Hill feels about
18 his claims. That is entirely understandable. And certainly
19 we all hope this case progresses forward as quickly as it
20 can so that people can be compensated as is appropriate
21 under the facts here and applicable law, whatever that law
22 is that the Second Circuit determines applies to this case.

23 But in the meantime, it's clear that this primary
24 injunction serves an important purpose to keep the status
25 quo in place, again it's the 28th such order that's entered

1 such that it allows the case to continue to have the
2 possibility of offering relief to victims consistent with
3 the plan of reorganization.

4 And so for all those reasons, Mr. Hill's motions
5 are denied. And I think the order can simply say that the
6 reasons for the denial are set forth on the record of
7 today's hearing rather than having to repeat the reasoning
8 blow by blow.

9 So with that, I believe that concludes the fourth
10 item on the agenda dealing with Mr. Hill's claims and I'll
11 turn it back to the Debtors to address anything else on the
12 agenda.

13 MR. KAMINETZKY: Your Honor, I think that
14 concludes the agenda of the matters going forward today.

15 THE COURT: All right, so before we break, I would
16 just like to reiterate one more time. I think I'm going to
17 do this at every hearing, just better safe than sorry.
18 Folks are all waiting for a decision from the Second Circuit
19 in this case. And, as I explained at a prior hearing, my
20 intentions to have a status conference promptly after that
21 ruling, not the day after, because I think people need a
22 certain amount of time to read it and digest it, but
23 promptly. And I mentioned that so that folks don't feel the
24 need, or the compulsion to file some papers immediately
25 seeking immediate relief, seeking to bring the decision to

1 my attention. I'm pretty confident that as soon as the
2 decision is issued, I will know about it just because I will
3 get notice through the official formal channels that the
4 decision has been issued.

5 So I just mentioned that again so that folks
6 understand they don't have to file something in order for me
7 to know that decision has been issued in order to have a
8 right to figure out what to do. We're going to have a
9 conference. We will have a process for that. And I'm just
10 trying to avoid people spending a lot of time feeling that
11 they need to submit something in writing to address things.
12 Everybody will be given a chance to be heard on that when we
13 get to the appropriate time.

14 So that's the only thing I had on my list of
15 things I just want to make clear. And with that, let me ask
16 if there's anything else from any other party before we
17 adjourn today's hearing? All right, hearing nothing, the
18 Court is adjourned. Thank you very much. Have a good day
19 and be well.

20 (Whereupon these proceedings were concluded at
21 12:34 p.m.)
22
23
24
25

I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: August 19, 2022